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VIA HAND DELIVERY

Jeff S. Jordan
Supervisory Attorney
Complaints Examination &
Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 6270
Owensboro Dermatology Associates

Dear Mr. Jordan:

This response is submitted on behalf of Owensboro Dermatology Associates ("ODA") in response to a complaint filed by Johnathan C. Gay with regard to Senate candidate Ron Paul's (R-KY) attendance at an open house that ODA held for the Owensboro medical community on September 1, 2009. It is difficult to determine from Mr. Gay's inartfully drafted complaint how, exactly, he believes that ODA may have violated the Federal Election Campaign Act ("FECA" or "the Act") or Federal Election Commission ("FEC" or "the Commission") regulations. The complaint alleges that Rand Paul's principal campaign committee, Rand Paul for U.S. Senate (the "Rand Paul campaign"), violated 11 C.F.R. § 102.9 by failing to report the reimbursement of expenses to ODA. Complaint at ¶ 12. The complaint then goes on to allege that the Rand Paul

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campaign violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 by failing to include the proper disclaimer on the invitation to the open house that ODA mailed to members of the Owensboro medical community. Complaint at ¶ 15. Nowhere in the complaint is there any specific allegation that ODA itself committed a violation of FECA or FEC regulations. Presumably, ODA was named as a respondent in MUR 6270 because the complaint implies that a Senate candidate's attendance at an open house held on corporate premises is a corporate contribution in violation of 2 U.S.C. § 441b. Similarly, the complaint implies that ODA had a duty to label the invitation to the open house in accordance with 2 U.S.C. § 441d. Both of these allegations are patently ridiculous and reflect nothing more than Mr. Gay's fundamental ignorance of FECA and FEC regulations. For all of the reasons set forth below, the Commission should activate this case and find that there is no reason to believe that ODA committed any violation of 2 U.S.C. § 441b, 2 U.S.C. § 441d or any FEC regulation.

Statement of Facts

Owensboro Dermatology Associates is a Kentucky professional service corporation. ODA has two shareholders: Dr. Michael Crowe and Dr. Artis P. Truett III. On September 1, 2009, ODA held an open house in its offices for members of the Owensboro medical community. The purpose of this event was to introduce members of the medical community who had recently moved to Owensboro to ODA in order to expand ODA's medical practice. ODA has held similar receptions for the local medical community in the past. ODA's offices are

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spacious and ODA has always made them available, at no charge, to a wide variety of local professional, civic and community organizations, including the Owensboro Community Health Network, the Junior League and a number of different churches and scouting organizations.

Dr. Truett and Dr. Rand Paul have been personal friends since they attended medical school together. ODA believed that having Dr. Paul as a featured guest at the open house would increase attendance at the event and be beneficial to ODA's medical practice, while giving ODA's current staff and the local medical community the opportunity to meet Dr. Paul.

The September 1, 2009 open house was not a fundraising event for the Rand Paul campaign. There were no solicitations for contributions to the campaign made by ODA or anyone else either in conjunction with the invitations to the event or during the event itself. Moreover, no provisions were made for the receipt of campaign contributions at the open house.

Legal Arguments

There is simply no basis in law or fact for the Commission to find reason to believe that ODA violated 2 U.S.C. § 441b, 2 U.S.C. § 441d or any FEC regulation. FECA's prohibition on corporate contributions is broad, but it does not preclude a Federal candidate from merely attending a meeting on corporate premises. Indeed, the Commission's regulations specifically allow candidate appearances on corporate property: "Corporations may permit candidates . . . on corporate premises or at a meeting, convention, or other function of the corporation to address or

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meet its restricted class and other employees of the corporation and their families Other guests of the corporation who are . . . participating in the event may [also] be present." 11 C.F.R. § 114.4(b)(1).¹ Clearly, the use of ODA's corporate offices to provide Dr. Rand Paul with an opportunity to meet with ODA employees and other members of the Owensboro medical community does not constitute a corporate contribution in violation of 2 U.S.C. § 441b.

Nor can it seriously be argued that the ODA open house was an effort by ODA to facilitate the making of contributions to the Rand Paul campaign. 11 C.F.R. § 114.2(f). The ODA open house was not a campaign fundraising event. The invitation to the open house did not solicit contributions to the Rand Paul campaign and no solicitations for contributions to the campaign were made by ODA or anyone else - either in conjunction with the distribution of the invitations to the event or during the event itself. Moreover, the Commission's facilitation regulations specifically exempt the use of corporate meeting rooms that are customarily made available to clubs, civic or community organizations. 11 C.F.R. § 114.2(f)(2)(i)(D). ODA has historically made its offices available, at no charge, to a wide variety of local professional, civic and community organizations, including the Owensboro Community Health Network, the Junior

¹ The Commission's regulations make candidate appearances on corporate premises contingent on the corporation meeting several conditions. 11 C.F.R. § 114.4(b)(1)(i)-(vii). It is highly doubtful that these conditions survive Citizens United v. Federal Election Commission, ___ U.S. ___, 130 S.Ct. 878 (2010). If the Government may regulate corporate speech only through disclaimer and disclosure requirements, 130 S.Ct. at 876, it surely cannot dictate to whom a corporation may speak regarding candidates for Federal office and under what conditions. The Commission has already recognized that Citizens United implicates regulations that govern corporate speech beyond a company's restricted class and has announced that it will initiate a rulemaking to conform 11 C.F.R. § 114.4 to the dictates of that decision. Federal Election Commission, FEC Statement on the Supreme Court's Decision in Citizens United v. FEC (Feb. 5, 2010) (available at <http://www.fec.gov/press/press2010/2616205CitizensUnited.shtml>) (last accessed May 27, 2010).

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League and a number of different churches and scouting organizations. Accordingly, there is no factual or legal basis for the Commission to find reason to believe that the ODA open house violated 2 U.S.C. § 441b.

Finally, the complaint's implication that ODA was required by 2 U.S.C. § 441d and 11 C.F.R. § 110.11 to place a disclaimer on the invitation to the open house is simply ludicrous. Mr. Gay apparently interprets 2 U.S.C. § 441d to require a disclaimer on any piece of paper that includes the name of a candidate for Federal office. The law is not that broad. When a public communication is disseminated by a person other than a political committee, a disclaimer is only required in three specific situations: (1) if the public communication expressly advocates the election or defeat of a clearly identified candidate, (2) if the public communication solicits a contribution, or (3) if the public communication is an electioneering communication. 11 C.F.R. § 110.11(a)(2)-(4). The ODA invitation simply does not fall into any of these three categories – it contains no express advocacy or electioneering message and it does not solicit any contributions. It merely invited members of the Owensboro medical community to an event where they could meet a candidate for Federal office. Accordingly, there is no basis for the Commission to find reason to believe that ODA committed any violation of 2 U.S.C. § 441d or 11 C.F.R. § 110.11.

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Conclusion

For all of the reasons discussed above, the Commission should determine that there is no reason to believe that Owensboro Dermatology Associates committed any violation of 2 U.S.C. § 441b, 2 U.S.C. § 441d or 11 C.F.R. § 110.11 and should dismiss this matter promptly.

Sincerely,



Brett G. Kappel

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